***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

WRIT PETITION Nos.1745, 1682 and 1915 of 2005

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% 11.02.2005

Between:

D.N.Prasad S/o. Bhadraiah (petitioner in W.P.No.1745/2005) Smt.K.Malathi W/o.K.Sudhakar Reddy (Petitioner in W.P.No.1682/2005) P.Madhusudan S/o. P.Chenchu Subbaiah (petitioner in W.P.No.1915/2005) **... PETITIONERS**

AND

Prl.Secretary to the State of A.P. (Home & Courts) & two others (respondents in W.P.No.1745/2005) The Superintendent, Cherlapally Jail, Ranga Reddy Dist.& 3 others others (respondents in W.P.No.1682/2005) Prl.Secretary to the State of A.P. (Home & Courts) & two others (respondents in W.P.No.1915/2005)

...RESPONDENTS

! COUNSEL FOR THE PETITIOENRS: Mr.K.Sarvabhouma Rao,

Mr.P.Vishnu Vardhan Reddy & Mr.A.Chandra Sekhar.

^ COUNSEL FOR THE RESPONDENTS: G.P.FOR HOME.

< Gist:

> Head Note:

? CITATIONS:

1. AIR 1950 SC 124
2. (1982) 1 SCC 1
3. (1997) 8 SCC 386
4. (1999) 4 SCC 65
5. (1987) 4 SCC 373
6. AIR 1997 SC 73

7. (1994) 98 Cr.App.R. 361

8. (2001) QB 885AIR 1986 SC 872

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION Nos.1745, 1682 and 1915 of 2005

WRIT PETITION NO : 1745 of 2005

Between:

D.N. Prasad, S/o Bhadraiah,
& ETV Channel, Eenadu Campus, Somajiguda, Hyderabad.

..... PETITIONER

AND

1 Principal Secretary to the State of Andhra Pradesh

(Home & Courts) Secretariate Buildings, Hyderabad.
2 Deputy General and Inspector General of Prisoners and

Correctional Services, Chanchalguda, Hyderabad.
3 Superintendent , Central Prison, Cherlapalli, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of the writ of mandamus declaring the action of the 2nd respondent in refusing to permit the petitioner or any other authorized person from our Eenadu News Paper and ETV channels to interview or to elicit information from Sri Maddelacheruvu Suryanarayana Reddy @ Suri serving life sentence in the 3rd respondent central prison as illegal, arbitrary, malafide and in violation of the fundamental rights guaranteed by the constitution of India to its citizens including the convicts and the freedom of press and the rights of the citizens to have information and to consequently direct the respondents to permit the petitioner or any other authorized persons from our Eenadu News paper and ETV channels to interview or elicit the

information or comments from Mr Suri on such terms and conditions as deemed fit.

Counsel for the Petitioner:MR.K.SARVA BHOUMA RAO

Counsel for the Respondents: GP FOR HOME

WRIT PETITION NO : 1682 of 2005

Between:

Smt. K. Malathi W/o K. Sudhakar Reddy
R/o Prasanthi Towers, G-105, Madhurangar, Hyderabad.

... PETITIONER

AND

1 The Superintendent, Cherlapally Jail, Ranga Reddy District
2 The Inspector General of Prisons, and Correctional Services,

Hyderabad
3 The D.G. and I.G. of Prisons and Correctional Services,

near Chanchalguda Jail, Hyderabad
4 The Secretary, Government of Andhra Pradesh Home

Department, Secretariat, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ order or direction more particularly one in the nature of writ of Mandamus, declaring the action of the respondents in not allowing the petitioner for taking interview with Gangula Suryanarayana Reddy @ Maddelacheruvu Suri (Life Convict) along with Consequently to direct the respondents to allow the petitioner for taking interview with Gangula Suryanarayana Reddy @ Maddelacheruvu Srui (Life Convict) along with camera man in Cherlapally Jail as per Prison Rules and pass such other order or orders as the Hon'ble Court may deem fit and proper in the interest of justice.

Counsel for the Petitioner: MR.P.VISHNUVARDHAN REDDY

Counsel for the Respondents: GP FOR HOME

WRIT PETITION NO : 1915 of 2005

Between:

P. Madhusudan, S/o. P. Chenchu Subbaiah,
R/o. B-101, Keshav Dale Apartments, 6-3-581, Anandnagar, Khairtabad - 500 004, Bureau Chief, Teja News,

Jubliee Hills, Hyderabad.

... PETITIONER

AND

1 The Principle Secretary (Home) State of Andhra Pradesh, Secretariat Buildings, Hyderabad.
2 Deputy Genral and Inspector General of prisons and

Correctional services, Chanchalguda, Hyderabad.
3 Superintendent, Central Prison, Cherlapalli, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in refusing to permit the petitioner or any other authorized person from Teja News Channel to interview Sri Maddelacheruvu Suryanarayana Reddy @ Suri who expressed his willingness to be interviewed, serving life sentence in the 3rd respondent central prison as illegal, arbitrary, malafide and in violation of fundamental rights guaranteed by the constitution of India to its citizens including the convicts and the freedom of press and the right of the citizens to have information and to consequently direct the respondents to permit the petitioner or any other authorized person from Teja News Channel to interview Mr. Suri on such terms and conditions as deemed fit and proper and to pass such other order or ordrs as deemed fit and proper in the circumstances of the case

Counsel for the Petitioner:MR.A.CHANDRASEKHAR

Counsel for the Respondents: GP FOR HOME

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.Nos.1745, 1682 and 1915 of 2005

COMMON JUDGMENT:

The petitioners in these three writ petitions are accredited journalists. Each one of them is associated with a News Agency as well as a T.V. channel. All of them have approached the Superintendent, Central Prison, Cherlapalli, Hyderabad, and Deputy General and Inspector General of Prisoners and Correctional Services, Chanchalguda, Hyderabad, seeking permission to interview and elicit information from one Sri Maddelacheruvu Suryanarayana Reddy, alias Suri, who is serving life sentence in the Central Prison, Cherlapalli, Hyderabad. The occasion for them to interview, or to elicit information from the said person arose, on account of the fact that he was arrayed as one of the accused in the murder of an M.L.A., of the Andhra Pradesh State Legislature, by name
Sri Paritala Ravindra, who was murdered at Anantapur, on 24-01-2005.

2. Petitioners contend that, in view of various dimensions that the case of murder of Sri Paritala Ravindra, had assumed, it has become necessary for them to keep the public, at large, informed of the various possible angles of the matter. Extensive reference is made in the respective affidavits, to the developments, that have taken place ever since
24-01-2005. They ultimately contend that every citizen, and thereby the press, or the electronic media, has a right to propagate the ideas, or to project the views that are possible, in relation to an incident of public importance. They contend that the inaction on the part of the respondents in according permission is violative of their fundamental rights, guaranteed under Article 19(1) (g) of the Constitution of India.

3. Submissions on behalf of the petitioners are made by learned counsel Sri K. Sarvabhouma Rao, P. Vishnu Vardhan Reddy and
Sri A. Chandrasekhar. All of them contend that, though, basically it is the function of the Investigating Agency, to identify the actual culprits and bring them to the book,

the society, at large, is entitled to know the reaction of an accused, in relation to such incident. They plead that the necessity for the press to interview one of the principal accused in the case has arisen, on account of the fact that he is already serving a sentence, and there is no facility for him to react to the accusation made against him. Learned counsel point out that, in a way, the petitioners are attempting to supplement the personal right of an accused, and in that view of the matter, the refusal on the part of the respondents to accord permission cannot be countenanced. Learned counsel rely upon several judgments of the Supreme Court, in support of their contention.

4. Learned Government Pleader for Home obtained detailed instructions from the respondents. He submits that the case is still at the primary stage of investigation, and having regard to the importance and dimensions involved in it, the investigation was entrusted to the C.B.I. He submits that any interference by the media or journalists, at this stage, is likely to have its negative effect upon the course of investigation. He submits that when it is impermissible for a convicted prisoner, to enjoy unbridled rights of speech and expression, the press cannot expand the same. On the basis of the various observations made by the Hon'ble Supreme Court, in several judgments, he urges that the freedom of press is not absolute or uncontrolled, and that it has to be exercised in such a way, as not to meddle with the course of investigation of prosecution of cases. He also contends that the permission accorded by the Supreme Court in several cases was for the purpose of advancing the cause of those who are serving the sentences, and not in relation to the crimes, alleged to have been committed, thereafter.

5. The petitioners sought the respondents (prison authorities), to interview one of the life convicts, serving sentence in that prison. Apart from asserting their right under Article 19(1)(g) of the Constitution, the petitioners also urge that the interview of the said person would result in placing proper and appropriate information, as to his involvement in the murder of Sri Paritala Ravindra, before the society at large. Therefore, it becomes necessary to know the contours of the freedom of press, as it prevailing in India.

6. Freedom of press has been culled out through the process of interpretation, of Article 19(1) (g) of the Constitution of India, which reads as under:

"**Article 19(1)**: All citizens shall have the right

a. to freedom of speech and expression"

7. No independent statute or provision exists, either defining or determining the parameters of freedom of press. The importance of the press, be it, of print or of electronic media, has been recognized beyond any pale of doubt. As early as in the year 1950, in ***Romesh Thappar v. State of Madras***[1], the Supreme Court observed as under:

> "…The press has now assumed the role of the public educator making formal and non-formal education possible in large scale, particularly in the developing world where television and other kind of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments…"

The same view came to be reiterated in subsequent judgments rendered by the Supreme Court and the High Courts. However, as in the case of any rights, fundamental or legal, reasonable restrictions on this freedom are also recognized. Whenever restrictions were sought to be imposed by the Government, on the exercise of the freedom of speech and expression, they were examined on the touchstone of reasonableness, and such of the restrictions, which were found to be unreasonable, were set at naught. It is not necessary to refer to those judgments, in the present context.

8. The scope of the right of a News Agency, or News Reporter, to interview the persons, who are facing criminal charges, fell for consideration by the Courts in the recent past. A distinction has been maintained between the right to interview the persons, who are already convicted of offences and are serving sentences, on the one hand, and those who are facing charges, but yet to be convicted, on the other hand. In the former category of cases, a relatively liberal approach was adopted and permissions were accorded to interview them, so that the society at large would be appraised of the feelings of the convict, or the factors that led to his conviction, and the like. Reference, in this context, may be made to the judgments of the Supreme

Court in ***Prabha Dutt v. Union of India***[2]. While granting permission to interview two individuals, who were sentenced to death; the Supreme Court made the following observations:

> "…The Press is entitled to exercise its freedom of speech and expression by publishing a matter which does not invade the rights of other citizens and which does not violate the sovereignty and integrity of India, the security of the State, public order, decency and morality. But in the instant case, the right claimed by the petitioner is not the right to express any particular view or opinion but the right to means of information through the medium of an interview of the two prisoners who are sentenced to death. No such right can be claimed by the Press, unless in the first instance, the person sought to be interviewed is willing to be interviewed. The existence of a free Press does not imply or spell out any legal obligation on the citizens to supply information to the Press, such, for example, as there is under Section 161(2) of the Criminal Procedure Code…"

9. In the latter category of cases, the approach has been further cautious and careful. The reason is that any information touching upon the involvement or innocence of a person accused in a crime, even while the trial is pending, is likely to hamper the investigation or impair the trial. Such instances may result in an unsatisfactory and imperfect disposal of the case. It is immaterial whether the impact of the same is felt by the complainant or the accused.

10. In the instant case, the person, who is sought to be interviewed, answers both the above descriptions, namely, the convict as well as an accused. He is already serving a life sentence, on being convicted in a Car Bomb Blast Case. Incidentally, he is named as one of the accused, in relation to a murder of an M.L.A., which took place on 24-01-2005. Since the purpose of the proposed interview, by the petitioners, is in relation to his involvement in the murder case, as an accused, the matter needs to be examined from that angle.

11. In the Criminal Law, as it prevails in India, the State has the sole prerogative to prosecute an individual for committing an offence. It connotes one of the facets of sovereignty. Prosecution, in turn, has several facets, such as investigation and trial. In the prevalent system, a person, accused of committing an offence, is accorded the right of silence. It is for the prosecution to prove and establish the involvement of an accused in a crime. It is no part of the duty of a person, accused of an offence, to explain or clarify his stand. The provisions of the Cr.P.C. as well as the Evidence Act, make it amply clear that, any statement recorded from an accused, during the

course of investigation, cannot be used as evidence against him. Similarly, Clause (3) of Article 20 of the Constitution mandates that no person, accused of an offence, shall be compelled to be a witness against himself. It is the cumulative effect of these provisions, that constitute right of silence of an accused.

12. When the State itself cannot violate or infringe such a right, neither any individual nor an agency, like the Press, can be permitted to invade the same. Any intrusion into such right of an accused would certainly expose him to several perils, or make his condition vulnerable. For example, the prosecution may present a case, which proceeds on the footing that the accused was at the scene of offence. If, in fact, the accused was at a different place, he can take the plea of alibi, and demolish the case presented by the prosecution. Such a plea can be effectively taken, only after the prosecution comes with a particular stand, during the course of trial. If the accused is made or forced to speak as to where he was, when the relevant incident occurred, the prosecution would become alert and may frame its evidence in such a way as to suit and conform to the stand taken by the accused. In such an event, the immediate impact is felt by the accused. He would be deprived of the benefit arising out of the loophole in the case of the prosecution, on account of the untimely and unnecessary revelation elicited through him, in an interview. Examples can be multiplied.

13. What is stated by an accused, hardly constitutes the basis or an important factor, in the prosecution. The prosecution is expected to gather the material from its own point of view, to connect the crime to an accused. Any interference with such a process, is prone to mislead or water-down the prosecution, or for that matter, the trial. It is not as if the person, whom the petitioners intended to interview, expressed his willingness to state anything on his own accord. As of now, he is serving a sentence in a different case. It is debatable as to whether he holds the same right as a free citizen, in the matter of expression of views and to canvass them. Even assuming that he holds the same right as any free citizen, he is not before this Court. Therefore, the request of the petitioners falls squarely in the realm of freedom of press.

14. The freedom of press, in the context of trial of criminal cases, came to be considered by the Supreme Court in a recent judgment in ***State of Maharashtra v. Rajendra Jawanmal Gandhi***[3]. The Court expressed its displeasure over the

phenomenon, which, it called as "*trial by press, electronic media, or public agitation*". The case related to an offence of rape of a minor girl. The accused therein, was convicted for the offence and sentenced to rigorous imprisonment for seven years, by the trial Court. In appeal, the High Court upheld the conviction under Section 354 but set aside the one under Section 376 I.P.C., and the sentence is also modified. An agitation was undertaken by an organization called Nagaric Keerthi Samiti, Kolhapur, against the acquittal of accused for the offence under Section 376 I.P.C. The Samithi filed an appeal before the Supreme Court, after obtaining leave. The State of Maharashtra has also filed an appeal.

15. In its judgment, the High Court expressed its displeasure and concern over the unnecessary publicity that was given to the entire incident and opined that it had caused great harm to the victim. In its judgment, the Supreme Court held as under:

> "**Para-37:** We agree with the High Court that a great harm had been caused to the girl by unnecessary publicity and taking out of morcha by the public. Even the case had to be transferred from Kolhapur to Satara under the orders of this Court. There is procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is the very antithesis of rule of law. It can well lead to miscarriage of justice…"

16. Learned counsel for the petitioners place reliance upon a judgment of the Supreme Court in ***State v. Charulata Joshi***[4]. In that case, the person, who was accused of an offence under Section 302 I.P.C., was sought to be interviewed by the reporter of a magazine. The trial Court granted the permission without any conditions. In the appeal preferred by the State, the High Court imposed certain restrictions. The State preferred an appeal to the Supreme Court. After referring to its own judgments in ***Prabha Dutt v. Union of India*** *(2 supra),* and the one in ***Sheela Barse v. State of Maharashtra***[5], the Supreme Court observed that blanket permission to journalists to interview an under-trial prisoner, is impermissible. The relief aspect of it could not be dealt with, because of the reason that the under-trial prisoner was shifted from the Jail, and it was left open to the magazine to renew its request, if the situation warranted.

17. In the recent past, accuracy and decency of reporting has suffered a set back. It

is particularly so, in case of the electronic media. By the time the inaccuracy or indecency is noticed and remedial steps are taken, the damage is already caused. In view of the bitter competition that exists among the various agencies, one tries to excel the other. Ghastly incidents, or those, which by any standard, ought not to have been presented or propagated are telecast live; that too continuously or constantly. The comments made, or the clipping displayed during such telecast, are leaving very little for the prosecution or the Courts to do. Unfortunately, it is not realized that any item of news telecast in the channels would reach persons of all categories, irrespective of age, literacy, and their capacity to understand or withstand. The impact of such a telecast on the society is phenomenal. If any proof in this regard is needed, the consequences of undue publicity, given to the execution of death sentence against Danunjay Chaterjee, would provide one. The telecast was so out of proportion and frequent that the boys of tender age were tempted to test, what hanging would be about. In the process, two boys are said to have lost their lives. Unfortunately, this uncontrolled or unedited telecast or propagation of news is resorted to, the name of exercise of right to freedom of speech and expression, or freedom of press. In England, an agency known as Broadcasting Standards Commission is constituted to regulate these matters. Such an agency does not exist in our country.

18. Taken aback by the content and tenor of news items, published in relation to certain matters, which have their own implications on the proceedings before it, as well as some responsible persons in the Government, the Supreme Court said this view in its judgment in ***In Re: Harijai Singh***[6].

> "**Para 10**: But it has to be remembered that this freedom of Press is not absolute, unlimited and unfettered at all times and in all circumstances as giving an unrestricted freedom of the speech and expression would amount to an uncontrolled licence. If it were wholly free even from reasonable restraints it would lead to disorder and anarchy. The freedom is not to be mis-understood as to be a press free to disregard its duty to be responsible. In fact, the element of responsibility must be present in the conscience of the journalists. In an organized society, the rights of the Press have to be recognized with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The protective cover of Press freedom must not be thrown open for wrong doings. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty it must be punished by Court of Law. The Editor of a Newspaper or a journal has a greater responsibility to guard against untruthful news and publications for the simple reason

> that his utterances have a far greater circulation and impact than the utterances of an individual and by reason of their appearing in print, they are likely to be believed by the ignorant. That being so, certain restrictions are essential even for preservation of the freedom of the Press itself…"

19. It must be said to the credit of Press in India that it had played pivotal role at various challenging and testing times. Investigative journalism undertaken by it had unearthed important instances, which were otherwise unnoticed. However, as is common with any other institution, certain disturbing tendencies have crept into this institution also. There cannot be any doubt that such a glorious institution would have the resilience to overcome the shortcomings, before the latter exhibit and unfold their malignancy. The effort of the petitioners cannot be treated an attempt to misuse their freedom, or to sensationalize the matter. They may be having laudable objectives or an intention to dispassionately inform the society of the facts, that may emerge from the person sought to be interviewed. However, it is difficult to accede to the request, because of the reason that, such permission is not only prone to have its impact on the investigation and effectiveness of the trial, but is also likely to invade the rights of privacy of the person, whom they intend to interview.

20. In ***R. v. Taylor (Michelle Ann) and Taylor (Lisa Jane)***[7], an English Appellate Court has this, to say about the impact of the press coverage of sensational instances on the trial of the matters.

> "…Further, it was clear that the press coverage had been sensational, unremitting, extensive inaccurate and misleading and despite the judges warning it was impossible to say that the jury had not been influenced by it. The nature of the publicity was such that a retrial would not be appropriate…"

21. The right to privacy, *vis-à-vis* the freedom of press was considered by the Court of Appeal in ***Regina v. Broadcasting Standards Commission, Ex p British Broadcasting Corporation***[8]. The Court observed,

> "It would be departure from proper standards, if, for example the B.B.C., without justification, attempts to listen clandestinely to the activities of a Board meeting, the same would be true of secret filming of Board meeting".

22. In ***Express Newspapers Pvt.Ltd. v Union of India***[9]***,*** the Supreme Court, even while upholding the freedom of press and recognizing its importance, sounded a note of caution. It said,

> "This right is one of the pillars of individual liberty – freedom of speech, which our Court has always unfailingly guarded. I wish to add that however precious and cherished the freedom of speech is under Art.19(1)(a), this freedom is not absolute and unlimited at all times and under all circumstances but is subject to the restrictions contained in Art.19(2). That must be so because unrestricted freedom of speech and expression which includes the freedom of the press and is wholly free from restraints, amounts to uncontrolled licence which would lead to disorder and anarchy and it would be hazardous to ignore the vital importance of our social and national interest in public order and security of the State".

23. It is not in dispute that the investigation of the case, in which the person sought to be interviewed, figures as an accused, is at initial stage. Several inconsistent theories have already been highlighted. It was rather surprising that, one after the other persons came forward owning their complicity of the crime. An average man gathers a feeling that a concerted attempt is being made to divert the attention of the prosecution as well as the public and to cover the real culprits. The investigating agency should be accorded the freedom, to proceed in the matter, and any step, which is likely to divert its attention or otherwise interfere with it, may complicate the issues and make the investigation to deviate from the correct line. The petitioners can certainly extend their services to the society, at large, at appropriate time, for instance, after the charge-sheet is filed. There is nothing, which prevents the petitioners or other agencies, to help the investigation by providing such information as they possess. However, it is impermissible to provide access to the petitioners to one of the accused, at this stage. They can renew their request after the charge-sheet is filed.

24. The writ petitions are accordingly disposed of. There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.11–02—2005.

Note:

L.R. copy to be marked.

(B/O)

KO

(One fair copy to the Hon'ble Sri Justice L.Narasimha Reddy

for his Lordship's kind perusal)

To

1 The Principal Secretary, Department of Home & Courts,

Govt. of A.P., Secretariate Buildings, Hyderabad.
2 The Deputy General and Inspector General of Prisoners and

Correctional Services, Chanchalguda, Hyderabad.
3 The Superintendent, Central Prison, Cherlapalli, Hyderabad.

4 The Inspector General of Prisons, and Correctional Services,

Hyderabad.
5 Two C.Cs to the Govt. Pleader for Home,

High Court buildings, Hyderabad (OUT)

6 The Under Secretary, Ministry of Law, Justice and Company Affairs,

Union of India, New Delhi.

7 The Secretary, A.P.Advocates' Association, Library,

High Court buildings, Hyderabad.

8 8 LR copies.

9 Two C.D. copies.